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CITY OF GAINESVILLE

Office of the City Manager

2005 DEC 27 P 5: 16

December 16, 2005

Kevin J. Martin, Chairman
Michael J. Copps, Commissioner
Jonathan S. Adelstein, Commissioner
Federal Communications Commission
445 12th St SW
Washington DC 20554

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05-311

Federal Communications Commission
Office of the Secretary

Dear Chairman Martin and Commissioners Copps and Adelstein:

The City of Gainesville, Florida has several comments regarding the Notice of Proposed Rulemaking regarding implementation of Section 621(a)(1) of the Communications Act of 1934 as amended.

Are local franchising authorities unreasonably refusing to grant competitive franchises and/or does the local franchising process constitute an unreasonable barrier to entry?

Both Verizon and SBC have been extremely vocal in promulgating this complaint. The City of Tampa in our State of Florida has been cited for unreasonably refusing to grant a franchise to Verizon. Instead, what the City of Tampa has done and continues to do is insist on a level playing field for all wireline video providers, regardless of the method of delivery of such video service.

It is important to note that, at least in the State of Florida, incumbent providers do not have exclusive use of the rights-of-way nor an exclusive right to provide video within any jurisdiction. Imposing upon newer entrants in the video delivery market the same conditions and requirements as are imposed upon incumbent providers is, in our opinion, an appropriate response to the level playing field provisions of the 1996 Telecommunications Act and Congress' clearly stated intent that competing providers of similar services should be treated similarly. If franchise requirements in effect for the incumbent did not effectively bar the incumbent from entering and remaining in the video delivery business, it is reasonable to assume that such requirements did not and do not constitute an unreasonable barrier to entry.

Franchise-imposed costs are generally related to institutional service provision and PEG support, as particularly enabled in Title VI. The relative financial strength of SBC and Verizon compared to the typical, much smaller incumbent video providers leads one to conclude that these two industry giants are well able to satisfy the same requirements

as incumbent companies. Furthermore, the FCC's own pricing rules and formulas permit a cable video provider to recover from customers any franchise-required costs over the term of the franchise agreement. Permitting newer entrants to escape level playing field requirements at the local government level merely provides these newer entrants an unwarranted advantage and encourages predatory pricing that specifically disadvantages the incumbent cable providers.

In addition, providing such an advantage to newer entrants will immediately subject local jurisdictions, currently striving to treat all video providers similarly, to redress from current incumbents. The potential financial harm to local jurisdictions is difficult to calculate but, at a minimum, such an action has the potential of imposing an extremely large unfunded mandate on local jurisdictions which acted within their rights and authority over the years.

Does the Commission have authority to establish a minimum amount of time for buildout, and what constitutes a reasonable build-out time?

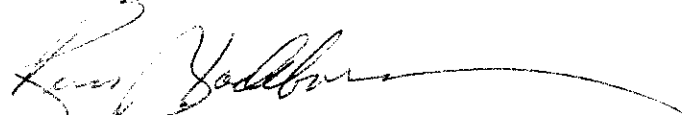
We support the Commission's authority to establish a minimum buildout time. Such a time frame, assuming it is not unnecessarily protracted, would help ensure the nondiscriminatory provision of service to all service areas. This would help ensure that newer entrants do not receive a competitive advantage over incumbent providers that might result from serving only denser or more affluent areas.

Should the Commission address actions at the state level, if they are deemed to be unreasonable barriers to entry?

No. There are adequate judicial remedies to redress any such problems. Franchising policies and procedures and cable video oversight vary so greatly from one state to another that we believe federal intervention has the effects both of interfering with the rights of the states to protect, secure and restrict their rights-of-way and of unnecessarily overreacting to problems that may or may not be real given a dispassionate analysis.

In summary, we believe that any proposed rulemaking should be very narrow and directed at solutions that do not disadvantage incumbent video providers; local and state governments; or the viewing public.

Sincerely,

A handwritten signature in black ink, appearing to read "Russ Blackburn", with a long horizontal flourish extending to the right.

Russ Blackburn
City Manager